

REMARKS/ARGUMENTS

In conjunction with the RCE filed concurrently herewith, Applicants respectfully request reconsideration and allowance of the instant application based upon the amendment and arguments presented herein. Claims 1-11 remain in this application.

Request for Consideration of References Submitted in Information Disclosure Statements

Applicants submitted an Information Disclosure Statement (IDS) on October 28, 2003, which included a statement under 37 C.F.R. § 1.98(d)(1). Although copies of the NPL documents cited in the IDS were not provided, the NPL documents were provided in one of the earlier filed priority applications. It is respectfully requested that the Examiner consider the NPL documents cited in the IDS filed October 28, 2003 and initial each reference on a copy of the PTO1449 form.

Applicants further request consideration of the IDS filed February 1, 2008 under 37 C.F.R. § 1.97(c) and evidence of consideration by return of an initialed PTO-1449 form.

Interview Request

In that the instant response does not place the application in condition for allowance, applicants respectfully request that the Examiner contact the undersigned at the number below to arrange an interview.

Double Patenting

Claims 1-9 stand rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. patent no. 6,681,326. Notwithstanding the merits, to obviate this rejection and expedite prosecution, applicants submit herewith a Terminal Disclaimer.

Rejections under 35 U.S.C. § 102

Claims 1-3 and 11 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent no. 6,434,535 to Kupka et al. ("Kupka"). Applicants respectfully traverse this rejection.

The final office action and Advisory Action both assert that Kupka discloses all the features of claim 1. To show the at least one programming source and the distribution center, the Office relies on Fig. 1 and more specifically server 16 to show the distribution center. Apparently, the Office relies on removable storage 28 to show the at least one programming source.

As amended, claim 1 calls for a distribution center comprising a remote server, said remote server storing the at least one partially encrypted video program received from *the at least one programming source, which is located remote from the remote server*. At the time the server 16 receives data from the removable storage 28, the removable storage 28 is not located remote from the server 16. Indeed, there is no teaching or suggestion that server 16 receives data from a remote source. For these reasons, Kupka does not teach or suggest at least the claim 1 feature of a distribution center comprising a remote server, said remote server storing the at least one partially encrypted video program received from *the at least one programming source, which is located remote from the remote server*.

Rejections under 35 U.S.C. § 103

Claims 4-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kupka in view of U.S. patent no. 5,999,629 to Heer et al. (“Heer”). Claim 10 stands rejected under 35 U.S.C. § 103(2) as being unpatentable over Kupka in view of U.S. patent no. 5,675,647 to Garneau et al. (“Garneau”). Applicants respectfully traverse these rejections.

Neither Heer nor Garneau cure the deficiencies of Kupka discussed above with respect to claim 1. Since claims 4-10 directly or indirectly depend from claim 1, the combination of Kupka and Heer even assuming, but not admitting, proper does not result in the claim 4-9 combination of features and the combination of Kupka and Garneau even assuming, but not admitting, proper does not result in the claim 10 combination of features.

CONCLUSION

It is believed that no fee is required for this submission. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,
BANNER & WITCOFF, LTD.

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